



MALL SPACE
MANAGEMENT
TURNING SPACE INTO PROFIT

MEMORANDUM OF AGREEMENT

Between
THE ATRIUM COURT RENTALS
a division of
Mall Space Management cc
(Registration No. 1999/027025/23)
Hereinafter referred to as **TACR**

And

(Registration No. _____)
Hereinafter referred to as the "**Convenor**"

Herein represented by _____

(Identity No. _____)
Who warrants that he/she is duly authorised hereto

RECORDING

The parties have agreed that the Convenor will stage a promotion/exhibition ("the event") at The Atrium, ("the Centre") 430 Peter Mokoba Road (formerly Ridge Road) upon the following terms and conditions:-

1.	PARTICULARS OF PROMOTION		
	1.1	Name of event:	
	1.2	Description of event:	
	1.3	Location of event: Contact person: Contact number:	
	1.4	Duration of event:	
	1.5	Set up date:	
	1.6	Break down date:	
	1.7	Number of exhibitions:	
	1.8	Deposit: (payable upon signature)	
	1.9	Hire charge: (payable in terms of clause 2)	
	1.10	Should this signed contract not be returned to Mall Space Management Offices, The Atrium, by <u> </u> / <u> </u> / <u> </u> , then the parties agree that the booking in respect of the event will automatically terminate.	
	1.11	The Convenor shall at its cost unless specifically arranged with TACR, provide all the promotional equipment and advertising material required to stage the event including but not limited to tables, chairs, stanchions, screens and posters. It is agreed that TACR shall not be liable for any loss or damage of whatsoever nature and howsoever caused to the said promotional equipment. It is further stipulated that posters may not be greater than 890mm in length and 630mm in width or less than 841mm in length and 594mm in width (A1 size). INITIAL _____	

2. **HIRE CHARGE**

2.1 The Convenor agrees to remit in full the hire charge referred to in clause 1.9 as determined by TACR at its sole discretion, to TACR, 42 (forty two) days prior to the commencement date stipulated in clause 1.4. Should the event be cancelled by the Convenor prior to the commencement date, for any reason whatsoever, then, in that event, TACR reserves the right to demand and/or retain payment of the full hire charge which the parties agree shall be a genuine pre-estimate of the damages suffered by TACR as a result of such a cancellation. Similarly, should the event be cancelled by TACR prior to the commencement date, for any reason whatsoever, then, in that event the Convenor shall be entitled to a full refund of the hire charges paid to date.

2.2 **Any booking made within 42 days of the commencement date stipulated in clause 1.5 must be paid in full immediately upon signature**

2.3 Only electronic fund transfers; bank certified cheques or cash payments will be accepted.

2.4 These payments are to be made in favour of:

MALL SPACE MANAGEMENT CC; First National Bank Sandton City; Acc. No. 62397772643; Bank Code 254605

and proof thereof delivered by hand, telefax or e-mail to the domicilium address (specified in clause 16), 42 days prior to the commencement date.

3. **RELOCATION**

TACR reserves the right to change the location of the event by giving the Convenor written notice of such change, where the operation of the Centre as a whole necessitates such a move. TACR will endeavour to relocate the event to a position of equivalent exposure and will refund the Convenor any difference in the hire charges applicable to the old and new locations. In the event that TACR and the Convenor are unable to agree on a new location then TACR shall refund the full hire charge paid to date to the Convenor.

4. **SUBMISSION OF PLANS**

The Convenor agrees to provide the plans of the event detailing the exact location of any exhibits and the layout and overall appearance of any promotion. TACR undertakes to ensure that the plans are approved at least 14 (fourteen) days prior to the set up date stipulated in clause 1.5. No event will be permitted to take place unless such plans have been approved. Should the Convenor not comply with the provisions of this clause then, in such event, TACR reserves the right to cancel the event 14 days prior to the scheduled set up date specified in clause 1.5.

5. **BUILD-UP OF EVENT**

5.1 It is agreed that, unless otherwise specified in clauses 1.5 and 1.6, all set building of any exhibits and promotional material will be undertaken only on the set up date, and dismantled on the break down date, or on such alternative days to be agreed with the TACR, in writing. Build-up or break-down of exhibitions may be carried out during normal trading hours at the discretion of Centre Management, however no vehicles whatsoever will be allowed into the Centre during normal trading hours

5.2 The Convenor agrees that it will not use any construction materials that are flammable, toxic, and potentially injurious or in anyway represent a safety or health hazard, and no electrical points, cables or fittings may be left exposed and accessible to the public. The Convenor shall also ensure that only silver duct tape is used for the taping of electrical and other cables. TACR shall be entitled to call for a certificate from a qualified electrician at the cost of the Convenor certifying all electrical work required for the event to be safe.

6. **LICENSES**

6.1 The Convenor warrants that in any instance where the type of promotion activity requires either the permission of or the granting of a license from any licensing, third party or local authority, such action is the responsibility of the Convenor and written proof of such approval shall be presented to TACR prior to the scheduled date of the event.

6.2 The Convenor warrants that all requirements and regulations in regard to artists, music and performing rights will be complied with, and the Convenor will be held responsible for any claims against TACR with regard to artists, music, performing rights and similar claims.

6.3 The Convenor undertakes to obtain all necessary consents and/or releases which may be required by TACR from third parties whose names, likenesses, testimonies, scripts, musical compositions or similar materials or rights are used in advertising/ promotion or any other materials prepared in terms of this agreement and the Convenor warrants that such written consents shall be obtained prior to the use of the advertising/promotion or other materials.

INITIAL

7. **MANNING OF THE EVENT**

The Convenor agrees that the event is to be fully operational during the minimum trading hours of the Centre in force during the period of the promotion – see <http://www.theatrium.co.za>. However, should the event be of such a nature that a security service is required; the Convenor shall provide at its cost a security arrangement to police the event day and/ or night from set up date to break down date specified in clauses 1.5 and 1.6. It is specifically recorded that the Convenor shall ensure that all security guards so employed shall be made fully acquainted with the security procedure of the Centre and, shall in the event of any emergency; follow all directions given by the Centre Management and its security staff. Should the Convenor wish to dismantle the event at the end of each day, and then set up again the following morning, the Convenor agrees to remove at its cost ALL promotional equipment from the given location, including all tables, chairs and screens etc.

8. **ADVERTISING**

- 8.1 The Convenor shall provide TACR with a copy of any leaflet, poster and other advertising material to be approved by TACR at least 4 (four) weeks prior to the scheduled date of the event. Any such leaflet, poster and other advertising material may only be distributed from within the promotional area.
- 8.2 Posters to A1 size (83.7cm x 59 cm) referred to in 1.12 for the event must be supplied by the Convenor to TACR for display in the poster boxes in and around the Centre at least 1 (one) week prior to the scheduled date of the event. The posters to be used as well as the cost relating thereto (as specified in clause 1.13) shall be paid by the Convenor to TACR by no later than 2 (two) weeks preceding the scheduled date from which the poster space has been booked.

9. **SERVICES**

The Convenor agrees that where the event, in the opinion of TACR, consumed an abnormal amount of power, water or other supplied service then in that event TACR may, in its sole discretion, levy an additional charge to the Convenor, only if it can be proven that such additional charge was directly attributable to the display of the Convenor.

10. **EXEMPTION FROM LIABILITY**

- 10.1 The Convenor hereby indemnifies and holds TACR its agents, directors and servants harmless against:
- 10.1.1 Any damage to the property which arises as a direct result of the negligent acts or omissions or wilful misconduct of the Convenor or any person for whom the Convenor is vicariously liable at law. The Convenor will specifically not be liable for any indirect, special or consequential loss or damage howsoever same arises. In addition the Convenor's liability in terms of this Agreement shall be limited and never exceed a maximum cumulative amount of R 25 000 000.00 (Twenty Five Million Rands only) per calendar year;
- 10.1.2 any liability in respect of any claims which may be made against TACR, arising out of damage to property, whether movable or immovable, of the Convenor, the tenants of shopping centre or of any third parties, including any consequential damage directly or indirectly flowing from physical damage to any such property save where such claims arise from TACR's negligent conduct;
- 10.1.3 liability in respect of the death of or injury to any person, wherever the damage, loss, injury or death is due to or arises out of the conduct of the convenor whether directly or indirectly, as a result of the staging of a promotional activity;
- 10.1.4 The Convenor indemnifies TACR against legal proceedings or expenses (including attorney and own client costs) which the Convenor may incur as a result of claims and/or proceedings relating to defamation, invasion of privacy, piracy, and plagiarism, misappropriation of ideas or concepts, infringement of advertising or intellectual property rights resulting from any act or otherwise of the Convenor.
- 10.2 In the event of the TACR being in a position to provide the Convenor with any form of overnight or temporary storage space, it is agreed by the parties that TACR shall not be liable for any loss or damage of whatsoever nature and howsoever caused to the promotional equipment save where such loss or damage is caused by TACR or its employees and representatives gross negligence.

INITIAL _____

11. CONVENOR'S OBLIGATIONS

The Convenor agrees to maintain at all times a high standard of exhibition/promotion which is in the opinion of TACR, of a level commensurate with the image of the Centre. Without derogating from the generality of the above, the rules as stipulated in the attached "**Annexure 1**" shall be strictly observed by the Convenor.

12. FORCE MAJEURE

12.1 Neither party ("the affected party") shall be in breach of this Agreement where the inability to comply with any obligation is caused by *force majeure*, which shall include *inter alia* wars, riots, civil commotion, natural physical disasters, strikes or industrial action by either party's employees, provided such strikes and industrial action is legal and further provided that same is not limited solely to the employees of the affected party, any action by government or a public authority and circumstances wholly beyond the control of the parties ("the *force majeure* event").

12.2 Notice of the occurrence of the *force majeure* event shall be conveyed by the affected party to the other party ("the unaffected party") as soon as possible and shall include details of the event and the likely effect it may have on the affected party's obligations in terms of this Agreement.

12.3 In the event of the *force majeure* event continuing for a period of 30 calendar days or more, the affected party's rights and obligations in terms of this Agreement shall be suspended for the period of duration of the *force majeure* event and the unaffected party shall be entitled to make such temporary arrangements (including *inter alia* the appointment of a third party to perform the affected party's obligations during the period of duration of the *force majeure* event) as may be necessary to ensure the continuation of this Agreement.

12.4 In the event of the affected party being unable to perform in terms of this Agreement for a continuous period of at least 60 calendar days, the unaffected party shall be entitled to terminate this Agreement on the expiry of the 60 calendar day period as aforementioned on 7 calendar days' prior written notice to the affected party and the unaffected party shall not have any right of action vis-à-vis the affected party save insofar as accrued rights in respect of the period prior to the commencement of the *force majeure* event are concerned.

13. BREACH

13.1 Should any party ("the defaulting party") commit a breach of any of the provisions of this agreement, then the other party ("the aggrieved party") shall be entitled to give the defaulting party 7 calendar days' prior written notice to remedy the breach. If the defaulting party fails to comply with such notice, the aggrieved party shall be entitled to cancel this agreement or to claim immediate payment and/or specific performance by the defaulting party of all of the defaulting party's obligations whether or not the due date for payment and/or performance shall have arrived; in either event without affecting the aggrieved party's right to claim damages or to institute any other claim to which it may be entitled to in law or in terms of this agreement.

13.2 Either party shall be entitled to cancel this agreement immediately if the other party:

13.2.1 Is liquidated provisionally or finally; or

13.2.2 Commences business rescue proceedings; or

13.2.3 Commits an act of insolvency; or

13.2.4 Enters into or attempts to enter into a compromise with its creditors generally; or

13.2.5 has a judgment granted against it and fails, within 30 calendar days of such judgment coming to its attention, to satisfy same or institute an application for rescission or an appeal (which application for rescission or appeal shall be proceeded with expeditiously and with due care and diligence).

13.3 Should the Convenor fail to pay any amount due in terms of this agreement to TACR or commit or permit the commission of a breach of any of the conditions contained herein, whether or not such breach goes to the root of this contract, TACR shall be entitled but not obliged (notwithstanding any previous waiver or conduct on the part of the TACR that would otherwise stop it or anything contrary herein contained) to cancel this agreement forthwith in writing.

13.4 If this agreement is cancelled the Convenor shall immediately remove all its equipment from the promotional area within eight (8) hours of such notification, failing which TACR shall be entitled to remove such equipment at a reasonable cost for the Convenor's account and the TACR will not be held liable for any damages to said equipment save where it can be proven to be due to gross negligence by its employees and representatives.

INITIAL _____

14. INSURANCE

The Convenor -

14.1 Hereby warrants that it has and will maintain, at its cost, insurance cover in respect of: -

- 14.1.1 public liability insurance of at least R5 million per occurrence in respect of third party and property claims, and
- 14.1.2 loss or damage caused by all risk of whatsoever nature and will, if called upon by TACR to do so, furnish written proof of such insurance cover.

15. WHOLE AGREEMENT

This document constitutes the sole record of the agreement between the parties pertaining to the subject matter contained herein, and neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein. No addition to variation or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on the behalf of the parties.

16. NON-WAIVER

No indulgence granted to the Convenor shall constitute a waiver of any of the rights of TACR who shall not thereby be precluded from exercising any rights against the Convenor which may have risen in the past or which arises in the future.

17. DOMICILUM

The parties choose domicilum citandi et executandi for service of any notice, payment of any amounts due, the serving of any process and for any other purpose arising from this agreement as follows:

THE CONVENOR

Refer to Clause 18: invoicing details

MALL SPACE MANAGEMENT CC

Centre Management Suite, The Atrium
430 Peter Mokoba Road, Overport, Durban
E-mail: admin@mallspacemanagement.co.za

18. INVOICING DETAILS

Order Number _____

Company: _____

Co Registration No : (If sole proprietor kindly supply I.D. document) _____

VAT Number: _____

Attention: _____

Telephone: _____ Fax: _____

Physical Address: _____

Postal Address: _____

Email Address: _____

INITIAL _____

This done and signed at _____ on the _____ day of _____.

WITNESSES

1 _____

2 _____

SIGN: _____

For and on the behalf of the Convenor

This done and signed at _____ on the _____ day of _____.

WITNESSES

1 _____

2 _____

For and on the behalf of MALL SPACE
MANAGEMENT CC.



MALL SPACE
MANAGEMENT
TURNING SPACE INTO PROFIT

CONVENOR'S OBLIGATIONS

The Convenor agrees to maintain at all times a high standard of exhibition/promotion by strictly observing the following rules in accordance with the requirements referred to in clause 11;

- 11.1 no banners shall be permitted without prior permission from TACR;
- 11.2 no display material shall be permitted to exceed a height restriction of 1.8 metres, nor shall it be attached to any pillars, walls or shop windows;
- 11.3 The Convenor shall ensure that at all times during the event that no part of the event or the persons manning the event shall extend beyond the boundaries of the exhibition area;
- 11.4 all signage shall be printed or professionally sign written - no hand written signs shall be permitted;
- 11.5 all tables shall be covered either in exhibit branded table cloth, or the Convenor's branded table cloth in keeping with the high standard of the event;
- 11.6 no exhibition or material display shall obscure the visibility of, or access to, any shops sited in the proximity of the promotional area. Screens shall not form a blocking wall;
- 11.7 the Convenor agrees that no money be exchanged in the promotional area (unless specific arrangements are made with TACR and TACR's approval thereto is confirmed in writing);
- 11.8 the Convenor agrees that cooking demonstrations are not permitted in the promotional area. However, food samples may be given if prepared under conditions stipulated by the relevant local authority;
- 11.9 no alcohol may be consumed in the promotional area (launches, cocktail parties and the like must be discussed with and approved by TACR in writing);
- 11.10 use any audiovisual equipment of whatsoever nature in a manner which would constitute a nuisance to any tenants, patrons or the management of the Centre;
- 11.11 the Convenor agrees that in the event of any large equipment, display material or vehicles or any item of excessive weight required to be brought into the centre, the Convenor shall advise TACR at least 7 (seven) days in advance of the date and time of the event to allow the TACR to arrange access to the centre or to arrange approval by a structural engineer;
- 11.12 the Convenor shall supply a list of the names and addresses of any exhibitors taking part in the event at least 14 (fourteen) days prior to the scheduled date thereof, together with a copy of the standard contract between the Convenor and any such exhibitor relating to the event. Such list of participants must be approved by TACR in writing, and TACR reserves the right to exclude participants notwithstanding any contract entered into between the Convenor and participant. The contract between the Convenor and participant must include the requirement that the participant is aware of and accepts all the conditions of this agreement between TACR and the Convenor. TACR shall be entitled to distribute questionnaires to all participating exhibitors requesting their response to the event in order to maintain or improve the standard of any future events to be held in the Centre;
- 11.13 the promotion displays are to conform to the plans/proposals approved by TACR and no variation will be permitted without the prior written approval of TACR;
- 11.14 only promotional activities as described in 1.2 will be permitted. Any promotional activities not included therein will not be permitted and TACR shall be entitled to terminate forthwith any promotional activity, and request that the Convenor forthwith vacate the promotional area, should the Convenor be in breach of clause 1.2.
- 11.15 The Convenor shall at all times abide by the House Rules of the Centre.

INITIAL _____